seems to explain the refusal of the courts to enforce such contracts when purely executory. Though the corporation has acted, the courts refuse to give effect to those acts. But when the contract is fully performed in good faith on one side, the public policy against its enforcement is overbalanced by the hardship which such refusal would cause. The disability, being imposed for reasons of public good, should be removed by the same considerations.

EXERCISE OF GENERAL CORPORATE POWER FOR PARTICULAR ULTRA VIRES PURPOSE. — Although the proposition that anyone dealing with a corporation must at his peril take notice of its charter or articles of association, and cannot recover on a contract in the making of which its corporate powers have been exceeded, is accorded general recognition as an established rule of law,[1] nevertheless there exists on the part of the courts a decided tendency to seize upon any exceptional circumstances as a basis for enforcing these *ultra vires* contracts. Accordingly, the rule is qualified in cases where a corporation has a certain general power and the circumstances are such that whether the particular exercise of this power is *ultra vires* depends on facts peculiarly within the knowledge of the officers of the corporation. The nature of this qualification is represented by the following classes of cases: (1) A corporation with power to issue negotiable paper in the course of its business is liable on its accommodation note in the hands of an innocent holder for value.[2] (2) A corporation with power to incur indebtedness up to a certain fixed amount is liable to one who in good faith loans it money in excess of that amount.[3] (3) By analogy, it has recently been held that where a corporation with power to borrow money for the purposes of its business exercises that power for another purpose, the loan is not thereby invalidated in the absence of knowledge by the lender of the improper purpose of the loan. *In re David Payne & Co., Limited,* [1904] 2 Ch. 608.

This leads to a consideration of the effect of knowledge, on the part of the contracting party, of the extraneous facts which render a contract *ultra vires*. It might be contended that actual notice is equivalent to notice presumed by the law in matters entirely outside the scope of the corporate business, and that, where the reason for the qualification does not exist, the rules applicable to *ultra vires* contracts in general should prevail. Such undoubtedly would be the result in the first two classes of cases. The third class, however, in spite of the importance attached by the court in the principal case to the absence of knowledge of the improper purpose of the loan, is to be distinguished on the ground that such contracts are not in fact *ultra vires*. When a corporation issues an accommodation note or borrows money in excess of a fixed limit, the transaction *per se* is *ultra vires*, and the contracting party is a participant in that *ultra vires* transaction; but when a corporation exercises its general borrowing power for an improper purpose, it is the improper application of the funds that is *ultra vires*, and in that part of the transaction the lender is not directly concerned. In contracts between individuals for the sale of goods, bare knowledge by a vendor that an unlawful use is to be made of the goods sold will not prevent recovery of

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[1] Morawetz, Private Corporations, 2d ed., § 591.
[2] Monument National Bank *v.* Globe Works, 101 Mass. 57.
[3] Ossipee, etc., Manufacturing Co. *v.* Canney, 54 N. H. 295.

the contract price,[4] although anything amounting to participation in the unlawful act will bar that recovery.[5] By analogy it is believed that, in the third class of cases, the lender should be allowed to recover regardless of notice. In further support of this contention it is to be noted that if the improper purpose of the officers of the corporation should be subsequently abandoned and the funds properly applied, mere knowledge on the part of the lender of the preliminary wrongful intent would surely not be sufficient ground for invalidating the contract. This distinction, therefore, seems one upon which courts may properly seize in permitting a lender with notice of the wrongful purpose of the loan to recover against the corporation.[6]

RECENT CASES.

ADMISSIONS — ADMISSIONS BY CONDUCT — PAYMENT INTO COURT. — In an action of tort for personal injuries, the defendant pleaded a general denial and paid money into court. *Held*, that the cause of action is conclusively admitted, leaving only the question of damages to be tried. *Wells* v. *Missouri Edison Co.*, 84 S. W. Rep. 204 (Mo., St. Louis Ct. App.). See NOTES, p. 460.

BANKRUPTCY — PROVABLE CLAIMS — PART PAYMENT FOR BREACH OF TRUST BY CO-TRUSTEE. — By a compromise effected with one of two co-trustees who were jointly and severally liable for a breach of trust, the *cestui que trust* received a part of the sum found to be due. The other co-trustee was insolvent. *Held*, that the *cestui* may prove against the insolvent estate the full amount of the damages sustained by the breach of trust without deducting the sum already received. *Edwards* v. *Hood-Barrs*, 21 T. L. R. 89 (Eng., Ch. D.).

As the party injured may bring separate actions against each of several joint tortfeasors, so may a *cestui que trust* prove his claim for a breach of trust against the insolvent estate of each of his co-trustees. *Ex parte Poulson*, DeG. 79. But a claim against any one of several joint tortfeasors is satisfied in England by a judgment against any of the others, and in the United States by a satisfaction of such judgment. *Brinsmead* v. *Harrison*, L. R. 7 C. P. 547; *Lovejoy* v. *Murray*, 3 Wall. (U. S.) 1. It follows that where a compromise secures part satisfaction from one of those liable, the claim against the other parties should be correspondingly reduced. *Ellis* v. *Esson*, 50 Wis. 138. Where the other parties are insolvent the rule should apparently hold as to claims against their estates. *Cf. In re Pulsifer*, 14 Fed. Rep. 247. The point is, however, said to be new in England, and does not seem to have been directly adjudicated in this country. Nor is assistance to be obtained from the cases where after part payment by a surety the creditor has still been permitted to prove for his whole debt; for the total amount provable remains in such cases unchanged, the only question being as to those entitled to prove it. See 16 HARV. L. REV. 139.

BILLS AND NOTES — CHECKS — EFFECT OF DUPLICATE CHECK. — The defendant, the payee of a check, indorsed it to the plaintiff, who lost it. Nearly seven months later the plaintiff obtained a duplicate from the drawer which the defendant indorsed but which the drawee refused to pay for lack of funds. *Held*, that the payee's indorsement of the duplicate is only an acknowledgment of his original liability from which the plaintiff's laches has already discharged him. *Lewis* v. *Commercial National Bank*, 83 S. W. Rep. 423 (Tex., Civ. App.).

The plaintiff's laches constituted a good defense to the liability of the defendant on the original check, since the loss of it did not dispense with a regular presentment for payment. *Thackray* v. *Blackett*, 3 Camp. N. P. 164. And the indorsement of the duplicate check by the payee charged him with no new liability to the plaintiff. See *Benton* v.

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[4] Cheney *v.* Duke, 10 Gill & J. (Md.) 11; Hodgson *v.* Temple, 5 Taunt. 181.

[5] Wheeler *v.* Russell, 17 Mass. 258.

[6] Wright *v.* Hughes, 119 Ind. 324; Bradley *v.* Ballard, 55 Ill. 413; *In re* Contract Corporation, L. R. 8 Eq. 14.